IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3235 OF 2004
AND
CIVIL APPLICATION NO.3156 OF 2003
IN
FIRST APPEAL NO.88 OF 2002
WITH
CIVIL APPLICATION NO.3157 OF 2003
AND
CIVIL APPLICATION NO.3236 OF 2004
IN
FIRST APPEAL NO.89 OF 2002
AND
CIVIL APPLICATION NO.3158 OF 2003
AND
CIVIL APPLICATION NO.3238 OF 2004
IN
FIRST APPEAL NO.90 OF 2002
AND
CIVIL APPLICATION NO.3159 OF 2003
AND
CIVIL APPLICATION NO.3237 OF 2004
IN
FIRST APPEAL NO.91 OF 2002

Ashok Leyland Finance Ltd., ..Applicants

Versus

The Maharashtra State Financial Corporation and Anr. ..Respondents

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Ms.F.Sethna with Ms.D.Das i/by Shri Dunmorr Sett for the applicants.

Shri M.P.Rege i/by M.P.Rege & Co. for the respondents.

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**Coram : S.B.Mhase &**
**R.S.Mohite,JJ**

Date : 15.09.2004.

PC

. Heard Ms.F.Sethna for the applicants and Mr.M.P.Rege for the Respondents.

1. The applicants have approached this court with a prayer to retain the money which is with the applicants as a result of the auction conducted by the applicants of the trucks which were hypothecated with the respondents-financial agency. The present applicants were the guarantors for those hypothecated trucks with the financial agency and since the guarantee is enforced as against the present applicants the decree has been passed by a trial court as against the applicants. However, at the time of admission of appeal, the decreetal amounts have been deposited in this court by the applicants and thus the decreetal amounts are secured. In this background, the applicants were allowed to carry on the auction of the hypothecated trucks and thus the amounts realised by public auctions are with the applicants. Learned Counsel for the applicants submits that since the decreetal amounts are secured and in view of the prima facie satisfaction of the decree the applicants are entitled to retain this money and therefore, such order is prayed for. Learned Counsel for the respondent no.1-financial agency vehemently opposed for retention of such money. He submitted that yet

the appeal is pending and everything will depend upon the result of the appeal and the adjustment in between the parties will have to be carried out as per the decree which is to be passed in this appeal and therefore, it will be appropriate to keep this money with the court instead of with the applicants. He also submitted that the money which will be retained by the applicants will be used by them in their business as against this the money which is due to the respondents is kept in the court and it is not available for the respondents for business purposes. He also submitted that as a result of the retention of the money in the court the respondents will loose business and equally amount of money. Therefore, he submitted that in the facts and circumstances of the case, it will be appropriate to allow the disbursement of the decreetal amount deposited in favour of the respondents. Learned Counsel for the applicants submitted that since the money is deposited in the court the applicants have no objection for releasing the money provided security is obtained that in the event the appeal is allowed, the respondents will re-deposit the money in the court. On such submission, learned Counsel for the respondents submitted that if the amount of auction money is allowed to be retained by the applicants, the applicants may be asked to furnish an undertaking that in the event of the result of

the appeal being adverse, they will re-deposit the said money in the court and/or pay to the respondents. In view of the counter submissions made by both sides and reciprocal implied concessions involved in the said submissions which are disclosed from the above referred submissions, we find, in the facts and circumstances of the case, the following order is just and proper one. We, therefore, pass the following order :-

O R D E R

. The amount realised by the applicants by auction of the trucks which were hypothecated with the respondents shall be retained by the applicants till the final disposal of this appeal on their furnishing an undertaking within a period of 2 weeks that in the event of the decision of appeal requiring re-deposit of the said amount the applicants will re-deposit the said amount within two weeks in the court and/or as directed in the final decreetal order. We further modify the order dated 26.2.2002 passed in main appeal at the time of admission of appeal and the Registrar is hereby directed to release the amount deposited by the applicants/appellants in favour of Respondent No.1-MSFC on its furnishing an undertaking that in the event of the appeal being allowed in favour of

the applicants-appellants, the said amount will be re-deposited by the respondent no.1 in this court, within a period of two weeks. Both parties to file undertaking as directed within a period of two weeks. At this stage, the learned Counsel of both sides tried to persuade us that the undertaking be obtained to the effect that amount will be returned with interest, but we find this is a matter to be considered at the time of final hearing and we keep this point open at the time of final hearing. In view of this order, all of the Civil Applications stand disposed of.

. Certified copy expedited.

. Parties to act on an ordinary copy of this order duly authenticated by the Secretary/Sheristedar of this court as a true copy.

**(R.S.Mohite,J)** **(S.B.Mhase,J)**